



Republic of the Philippines
SUPREME COURT
Manila

EN BANC

G.R. No. L-25704 April 24, 1968

ANGEL JOSE WAREHOUSING CO., INC., plaintiff-appellee,
vs.
CHELDA ENTERPRISES and DAVID SYJUECO, defendants-appellants.

Luis A. Guerrero for plaintiff-appellee.
Burgos and Sarte for defendants-appellants.

BENGZON, J.P., J.:

Plaintiff corporation filed suit in the Court of First Instance of Manila on May 29, 1964 against the partnership Chelda Enterprises and David Syjueco, its capitalist partner, for recovery of alleged unpaid loans in the total amount of P20,880.00, with legal interest from the filing of the complaint, plus attorney's fees of P5,000.00. Alleging that post dated checks issued by defendants to pay said account were dishonored, that defendants' industrial partner, Chellaram I. Mohinani, had left the country, and that defendants have removed or disposed of their property, or are about to do so, with intent to defraud their creditors, preliminary attachment was also sought.

Answering, defendants averred that they obtained four loans from plaintiff in the total amount of P26,500.00, of which P5,620.00 had been paid, leaving a balance of P20,880.00; that plaintiff charged and deducted from the loan usurious interests thereon, at rates of 2% and 2.5% per month, and, consequently, plaintiff has no cause of action against defendants and should not be permitted to recover under the law. A counterclaim for P2,000.00 attorney's fees was interposed.

Plaintiff filed on June 25, 1964 an answer to the counterclaim, specifically denying under oath the allegations of usury.

After trial, decision was rendered, on November 10, 1965. The court found that there remained due from defendants an unpaid principal amount of P20,287.50; that plaintiff charged usurious interests, of which P1,048.15 had actually been deducted in advance by plaintiff from the loan; that said amount of P1,048.15 should therefore be deducted from the unpaid principal of P20,287.50, leaving a balance of P19,247.35¹ still payable to the plaintiff. Said court held that notwithstanding the usurious interests charged, plaintiff is not barred from collecting the principal of the loan or its balance of P19,247.35. Accordingly, it stated, in the dispositive portion of the decision, thus:

WHEREFORE, judgment is hereby rendered, ordering the defendant partnership to pay to the plaintiff the amount of P19,247.35, with legal interest thereon from May 29, 1964 until paid, plus an additional sum of P2,000.00 as damages for attorney's fee; and, in case the assets of defendant partnership be insufficient to satisfy this judgment in full, ordering the defendant David Syjueco to pay to the plaintiff one-half (1/2) of the unsatisfied portion of this judgment.

With costs against the defendants.

Appealing directly to Us, defendants raise two questions of law: (1) In a loan with usurious interest, may the creditor recover the principal of the loan? (2) Should attorney's fees be awarded in plaintiff's favor?

To refute the lower court's decision which is based on the doctrine laid down by this Court in *Lopez v. El Hogar Filipino*, 47 Phil. 249, holding that a contract of loan with usurious interest is valid as to the loan but void as to the usurious interest, appellants argue that in light of the New Civil Code provisions said doctrine no longer applies. In support thereof, they cite the case decided by the Court of Appeals in *Sebastian v. Bautista*, 58 O.G. No. 15, p. 3146.

The *Sebastian* case was an action for recovery of a parcel of land. The Court of First Instance therein decided in plaintiff's favor, on the ground that the so-called sale with *pacto de retro* of said land was in fact only an equitable mortgage. In affirming the trial court, the writer of the opinion of the Court of Appeals went further to state the view that the loan secured by said mortgage was usurious in nature, and, thus, totally void. Such reasoning of the writer, however, was not concurred in by the other members of the Court, who concurred in the result and voted for affirmance on the grounds stated by the trial court. Furthermore, the affirmance of the existence of equitable mortgage necessarily implies the existence of a valid contract of loan, because the former is an accessory contract to the latter.

Great reliance is made by appellants on Art. 1411 of the New Civil Code which states:

Art. 1411. When the nullity proceeds from the illegality of the cause or object of the contract, and the act constitutes criminal offense, both parties being in *pari delicto*, they shall have no action against each other, and both shall be prosecuted. Moreover, the provisions of the Penal Code relative to the disposal of effects or instruments of a crime shall be applicable to the things or the price of the contract.

This rule shall be applicable when only one of the parties is guilty; but the innocent one may claim what he has given, and shall not be bound to comply with his promise.

Since, according to the appellants, a usurious loan is void due to illegality of cause or object, the rule of *pari delicto* expressed in Article 1411, *supra*, applies, so that neither party can bring action against each other. Said rule, however, appellants add, is modified as to the borrower, by express provision of the law (Art. 1413, New Civil Code), allowing the *borrower* to recover interest paid in excess of the interest allowed by the Usury Law. As to the lender, no exception is made to the rule; hence, he cannot recover on the contract. So — they continue — the New Civil Code provisions must be upheld as against the Usury Law, under which a loan with usurious interest is not totally void, because of Article 1961 of the New Civil Code, that: "Usurious contracts shall be governed by the Usury Law and other special laws, *so far as they are not inconsistent with this Code.*" (Emphasis ours.)

We do not agree with such reasoning. Article 1411 of the New Civil Code is not new; it is the same as Article 1305 of the Old Civil Code. Therefore, said provision is no warrant for departing from previous interpretation that, as provided in the Usury Law (Act No. 2655, as amended), a loan with usurious interest is not totally void only as to the interest.

True, as stated in Article 1411 of the New Civil Code, the rule of *pari delicto* applies where a contract's nullity proceeds from illegality of the cause or object of said contract.

However, appellants fail to consider that a contract of loan with usurious interest consists of principal and accessory stipulations; the principal one is to pay the debt; the accessory stipulation is to pay interest thereon.²

And said two stipulations are divisible in the sense that the former can still stand without the latter. Article 1273, Civil Code, attests to this: "The renunciation of the principal debt shall extinguish the accessory obligations; but the waiver of the latter shall leave the former in force."

The question therefore to resolve is whether the illegal terms as to payment of interest likewise renders a nullity the legal terms as to payments of the principal debt. Article 1420 of the New Civil Code provides in this regard: "In case of a divisible contract, if the illegal terms can be separated from the legal ones, the latter may be enforced."

In simple loan with stipulation of usurious interest, the prestation of the debtor to pay the principal debt, which is the cause of the contract (Article 1350, Civil Code), is not illegal. The illegality lies only as to the prestation to pay the stipulated interest; hence, being separable, the latter only should be deemed void, since it is the only one that is illegal.

Neither is there a conflict between the New Civil Code and the Usury Law. Under the latter, in Sec. 6, any person who for a loan shall have paid a higher rate or greater sum or value than is allowed in said law, may recover the *whole interest* paid. The New Civil Code, in Article 1413 states: "Interest paid in excess of the interest allowed by the usury laws may be recovered by the debtor, with interest thereon from the date of payment." Article 1413, in speaking of "interest paid in excess of the interest allowed by the usury laws" means the whole usurious interest; that is, in a loan of P1,000, with interest of P20% per annum P200 for one year, if the borrower pays said P200, the whole P200 *is the usurious interest*, not just that part thereof in excess of the interest allowed by law. It is in this case that the law does not allow *division*. The whole stipulation as to interest is void, since payment of said interest is the cause or object and said interest is illegal. The only change effected, therefore, by Article 1413, New Civil Code, is not to provide for the recovery of the interest paid in excess of that allowed by law, which the Usury Law already provided for, but to add that the same can be recovered "*with interest thereon from the date of payment.*"

The foregoing interpretation is reached with the philosophy of usury legislation in mind; to discourage stipulations on usurious interest, said stipulations are treated as wholly void, so that the loan becomes one without stipulation

as to payment of interest. It should not, however, be interpreted to mean forfeiture even of the principal, for this would unjustly enrich the borrower at the expense of the lender. Furthermore, penal sanctions are available against a usurious lender, as a further deterrence to usury.

The principal debt remaining without *stipulation* for payment of interest can thus be recovered by judicial action. And in case of such demand, and the debtor incurs in delay, the debt earns interest from the date of the demand (in this case from the filing of the complaint). Such interest is not due to *stipulation*, for there was none, the same being void. Rather, it is due to the general provision of law that in obligations to pay money, where the debtor incurs in delay, he has to pay interest by way of damages (Art. 2209, Civil Code). The court *a quo* therefore, did not err in ordering defendants to pay the principal debt with interest thereon at the legal rate, from the date of filing of the complaint.

As regards, however, the attorney's fees, the court *a quo* stated no basis for its award, beyond saying that as a result of defendants' refusal to pay the amount of P19,247.35 notwithstanding repeated demands, plaintiff was obliged to retain the services of counsel. The rule as to attorney's fees is that the same are not recoverable, in the absence of stipulation. Several exceptions to this rule are provided (Art. 2208, Civil Code). Unless shown to fall under an exception, the act of plaintiff in engaging counsel's services due to refusal of defendants to pay his demand, does not justify award of attorney's fees (*Estate of Buan v. Camaganacan*, L-21569, Feb. 28, 1966). Defendants, moreover, had reason to resist the claim, since there was yet no definite ruling of this Court on the point of law involved herein in light of the New Civil Code. Said award should therefore be deleted.

WHEREFORE, with the modification that the award of attorney's fees in plaintiff's favor is deleted therefrom, and the correction of the clerical error as to the principal still recoverable, from P19,247.35 to P19,239.35, the appealed judgment is hereby affirmed. No costs. So ordered.

Reyes, J.B.L., Dizon, Makalintal, Sanchez, Castro, Angeles and Fernando, JJ., concur.
Zaldivar, J., took no part.
Concepcion, C.J., is on leave.

Footnotes

¹Should be P19,239.35.

²Art. 1933. By the contract of loan, one of the parties delivers to another, either something not consumable so that the latter may use the same for a certain time and return it, in which case the contract is called a commodatum; or money or other consumable thing, upon the condition that the same amount of the same kind and quality shall be paid, in which case the contract is simply called a loan or mutuum.

"Commodatum is essentially gratuitous.

"Simple loan may be gratuitous or with a stipulation to pay interest.

"In commodatum the bailor retains the ownership of the thing loaned, while in simple loan, ownership passes to the borrower."

"Art. 1953. A person who receives a loan of money or any other fungible thing acquires the ownership thereof, and is bound to pay to the creditor an equal amount of the same kind and quality."